

## **REMARKS**

In response to the Final Office Action mailed on February 20, 2009, Applicant respectfully requests reconsideration based on the above claim amendments, the following remarks, and co-filed RCE. Applicant respectfully submits that the claims as presented are in condition for allowance.

### **Substance of the Interview**

First, Applicant wishes to thank Examiner Jeanty for the telephone conference on May 5, 2009 in which Examiner Jeanty kindly explained his perspectives on the Final Office Action. In reference to the specification and figures, Applicant explained multiple differences between the invention and the prior art. The Examiner requested that the claims be amended to clarify the organization of the resulting store layout and stated that further consideration was required before making any determination on allowability of the claims. In light of the telephone conference and in compliance with 37 C.F.R. 1.133(b), the following remarks are respectfully submitted.

### **Claim Disposition**

Claims 1-29 are pending in the application. Claims 1-17 have been withdrawn from consideration. Claims 18-29 have been rejected.

### **Claim Amendments**

Claims 18-21, 28 and 29 have been amended and Claim 30 has been added, leaving Claims 18-30 for consideration upon entry of the present amendment. No new matter has been added by the amendments.

### **Support for Claim Amendments**

The amendments to Claims 18-21, 28 and 29, as well as newly added Claim 30, are fully supported in Applicant's specification. See, for example, FIGs. 2 – 4 and the

associated description thereof.

**Claim Rejections - 35 U.S.C. § 103**

Claims 18-29 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kane et al. U.S. Publication Number (US 20030014291) (hereinafter “Kane”). Applicant respectfully traverses the rejection and submits that Kane does not teach or suggest all of the elements of Claims 18-29.

Kane describes optimizing a product factor associated with a product (Kane, Abstract). However, it is unclear in Kane as to what specific results are achieved and how optimization is actually performed. Kane makes many broad assertions about using “standard linear programming techniques, well known to those skilled in the art, to produce an optimized result.” (see for example, Kane, paragraph [0038]). Kane is concerned with attempting to determine whether increasing or decreasing shelf space, which is associated with a product, will affect sales and profitability (Kane, paragraph [0009] and [0036]). Paragraph [0034] of Kane teaches that factor data and hierarchical data for stores may be maintained electronically. Kane teaches that shelf space is managed as defined shelf space sets for various products (Kane, paragraph [0029]). Paragraph [0047] of Kane states that “various shelf space sets which may have been defined by the store and associated with the product or product category are received. As previously presented, these shelf space sets are discrete sets such that they are not modified unless by some administrative operation, and for purposes of optimization the sets are not extrapolated or interpolated.” Applicant respectfully asserts, that at most, paragraph [0038] teaches that a user can manually override constraints, such as a shelf space attribute, prior to optimization.

Kane fails to teach or suggest, “assigning shelf space to said existing food products by food product type, wherein said assigning comprises: placing a first combination of packaging types of said existing food products on a first aisle of said grocery store, said first combination of packaging types comprising: dried, canned, and

bulk food items of said first food product type; and placing a second combination of packaging types of said existing food products on a second aisle of said grocery store, said second combination of packaging types comprising: dried, canned, and bulk food items of said second food product type, thereby enhancing grocery shopping experience by enabling customers to quickly locate said existing food products of said first and second food product types regardless of said packaging types”, as recited in Claim 18. Again, Kane is focused on determining how increasing or decreasing shelf space associated with a product will affect sales and profitability without regard to enabling customers to quickly locate existing food products regardless of packaging types (Kane, paragraph [0009] and [0036]). For at least the above reasons, Applicant respectfully submits that Claim 18 is patentable over Kane.

Claims 19, 20 and 29 depend from Claim 18 and are patentable for at least the same reasons that Claim 18 is patentable. Since they contain similar elements, Claims 21 and 28 are patentable for at least the same reasons that Claim 18 is patentable. Claims 22 – 27 depend from Claim 21 and are patentable for at least the same reasons that Claim 21 is patentable.

In rejecting Claims 18, 19, 21, 25-27, 28 and 29, the Examiner relies upon what is well known in the art. It is inappropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. See MPEP § 2144.03. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. Applicant respectfully requests that the Examiner cite a prior art reference to support these assertions. The Examiner must establish a date for assertions that serve as prior art. Even if the Examiner can locate a grocery store in the year 2009 that appears to employ a layout as described in the claims, that fact alone would be irrelevant since the instant application has an effective filing date of July 9, 2002.

Further regarding Claim 29, Applicant respectfully submits that Kane fails to teach or suggest, “said categorizing results in a third food product type, and said assigning places a combination of ethnic, organic, and baking food items of said third food product type on a common aisle of said grocery store”, as recited in Claim 29. For at least this reason, in addition to its dependence on Claim 18, Claim 29 is allowable over Kane.

Regarding Claim 30, Applicant respectfully submits that Kane fails to teach or suggest, “arranging food items of a first food type on a first aisle of the grocery store by placing a first combination of packaging types on the first aisle of the grocery store, the first combination of packaging types comprising: dried, canned, and bulk food items of the first food type; and arranging food items of a second food type on a second aisle of the grocery store by placing a second combination of packaging types on the second aisle of the grocery store, the second combination of packaging types comprising: dried, canned, and bulk food items of the second food type, thereby altering the grocery store layout and enhancing grocery shopping experience by enabling customers to quickly locate the food items of the first and second food types regardless of the packaging types”, as recited in Claim 30. Accordingly, Applicant respectfully submits that Claim 30 is also allowable.

**Conclusion**

Applicant is not conceding in this application that the previous claims are not patentable over the art cited by the Examiner. Rather, the present claim amendments are only for facilitating expeditious prosecution. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

It is believed that the foregoing remarks are fully responsive to the Final Office Action and that the claims herein should be allowable to the Applicant. In the event the Examiner has any queries regarding the instantly submitted response, the undersigned respectfully request the courtesy of a telephone conference to discuss any matters in need of attention.

If there are any additional charges with respect to this Response or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully Submitted,

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